IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 42 OF 2005
IN
SECOND APPEAL NO.1188 OF 2004

Anandrao Dnyandeo Darwan
(since deceased through his LRs)
Smt.Suman Anandrao Darwan & ors. ... Applicants.
Versus.
Sou.Sbobha Ashok Nimkar & ors. ... Respondents.

Shri A.M.Kulkarni for the Applicants.

Shri Hiranandani i/by Shrui C.G.Gavanekar for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 13th January, 2005.

P.C.:

1. Rule. Shri Hiranandani appearing for the Respondents waives service.

2. The Second Appeal is already admitted. The impugned decree is for partition and separate possession of the immoveable property. The prayer in this Civil Application is for stay of execution of the impugned decree. There is a separate prayer for injunction restraining the Respondents from creating any third party interests in the suit property.

3. The decree being for partition, the partition proceedings will have to go on. During the pendency of the appeal obviously the parties cannot create any third party interests.

4. Hence the following order is passed:

(i) Partition proceedings on the basis of the impugned Judgment and Decree to proceed further. However, actual physical partition by metes and bounds shall not be effected without permission of this Court.

(ii) Pending final disposal of the Appeal, the parties to the Appeal will not create any third party interests in respect of the suit property.

(iii) Civil Application is disposed in the above terms with no order as to costs.

(iv) Parties to act on authenticated copy of this order.

Judge.